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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,895	02/09/2004	Scott D. Hardy	10762-006001	8757
69713 7590 09/24/2007 OCCHIUTI ROHLICEK & TSAO, LLP 10 FAWCETT STREET CAMBRIDGE, MA 02138			EXAMINER MAYO, TARA L	
			ART UNIT 3671	PAPER NUMBER
			MAIL DATE 09/24/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/774,895  
Filing Date: February 09, 2004  
Appellant(s): HARDY, SCOTT D.

**MAILED**

**SEP 24 2007**

**GROUP 3600**

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Frank R. Occhiuti  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 18 June 2007 appealing from the Office action mailed 28 September 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

3,137,870	FINK	06-1964
3,763,506	SZEGO	10-1973
4,739,527	KOHUS ET AL.	04-1988
4,815,153	BLESER ET AL.	03-1989

5,291,623	ARTZ	03-1994
5,881,408	BASHISTA ET AL.	03-1999

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11, 12, 13, 14, 19 through 21, 22, 24, 25, 26 and 30 through 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szego (U.S. Patent No. 3,763,506) in view of Bashista et al. (U.S. Patent No. 5,881,408).

Szego '506, as seen in Figures 1 and 2, shows a structure comprising:

with regard to claims 11 and 30,

a base platform (12) and plurality of inflatable side panels (11) defining an enclosure for the child;

with regard to claim 19,

wherein the plurality of inflatable side panels is configured to be inflatable from a single valve (14; col. 1, lines 39 through 42);

with regard to claim 20,

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wherein the base and side panels are integral;  
with regard to claim 21,  
wherein the base is inflatable;  
with regard to claim 22,  
wherein the base platform comprises a plurality of elongated ribs; and  
with regard to claim 26,  
wherein the panels are inflated with air (col. 1, line 67).

Szego '506 fails to teach:

a protective member sealing the inner, inflatable panels from the child;  
the protective member being a woven mesh;  
the mesh being bonded to the side panels;  
the mesh being bonded by heat-sealing;  
a pump; and  
the lower end of the side panels having a width greater than the upper end.

Bashista et al. '408, as seen in Figures 1 through 5, disclose a mesh crib liner (30) formed of a woven material (col. 3, lines 33 through 36), wherein the woven mesh is bonded to the side panels (via elements 47), and wherein the protective member is also positioned at a corner region of the structure and capable of preventing a child from squirming or rolling in to the corner region.

With regard to claims 11, 12, 13 and 30 through 32, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device disclosed by Szego '506 such that it would further include the liner taught by Bashista et al. '408. The motivation would have been to provide the crib with means for preventing an infant or toddler from extending her limbs out through the apertures in the side panels.

With regard to claim 14, it would have been obvious to one having ordinary skill in the art at the time of invention to further modify the device disclosed by the combination of Szego '506 and Bashista et al. '408 such that the bonding means would comprise heat seals instead of hook and loop fasteners. The motivation would have been to secure the protective member to the side panels in a more secure manner.

With regard to claim 24, it would have been obvious to one having ordinary skill in the art of cribs at the time the invention was made to make the lower ends of each of the side panels of the device shown by the combination of Szego '506 and Bashista et al. '408 wider than their upper ends. The motivation would have been to stabilize the structure against over-tipping.

With regard to claim 25, the Examiner takes Official Notice of the use of pumps for filling inflatable devices with air.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szego (U.S. Patent No. 3,763,506) in view of Bashista et al. (U.S. Patent No. 5,881,408) as applied to claim 13 above, and further in view of Kohus et al. (U.S. Patent No. 4,739,527).

Szego '506 as modified by Bashista et al. '408 fails to teach:

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the means for bonding comprising stitching.

Kohus et al. '527, as seen in Figures 1 and 27, show a portable foldable playpen (10) comprising a protective member (162) sealing the inner panels (160) of the playpen from a child, wherein the protective member is formed of woven mesh (col. 6, lines 42 through 44) and is bonded to the inner panels by stitching (172).

With regard to claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the combination disclosed by Szego '506 and Bashista et al. '408 such that the bonding means would comprise stitching as taught by Kohus et al. '527 instead of hook and loop fasteners. The motivation would have been to secure the protective member to the side panels in a more secure manner.

4. Claim 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szego (U.S. Patent No. 3,763,506) in view of Bashista et al. (U.S. Patent No. 5,881,408) and Kohus et al. (U.S. Patent No. 4,739,527) as applied to claim 15 above, and further in view of Fink (U.S. Patent No. 3,137,870).

The combination of Szego '506, Bashista et al. '408 and Kohus et al. '527 fails to teach: binding tape positioned between the woven mesh and the inner inflatable panels; and stitching between the binding tape and the woven mesh and between the binding tape and the inner inflatable panels.

Fink '870, as seen in Figures 1 and 4, expressly teaches the combination of stitching (27) and binding tape (30) for securing the edges of an infant bumper guard (20), wherein the binding tape serves as reinforcement (col. 1, lines 58 through 66).

With regard to claims 16 and 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device shown Szego '506, Bashista et al. '408 and Kohus et al. '527 such that it would include binding tape as taught by Fink '870 between the woven mesh and the inflatable side panels. The motivation would have been to further reinforce the connection between the protective member and the side panels.

With specific regard to claim 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include additional stitching as claimed since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

5. Claims 18, 27, 2, 3, 4, 5, 6, 8, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szego (U.S. Patent No. 3,763,506) in view of Bashista et al. (U.S. Patent No. 5,881,408) as applied to claim 11 above, and further in view of Artz (U.S. Patent No. 5,291,623A).

The combination of Szego '506 and Bashista et al. '408 further teaches all of the limitations of claims 3 through 6, 9 and 10 as set forth above in section 2.



The combination of Szego '506 and Bashista et al. '408 fails to teach:  
the side panels being individually inflatable;  
an inflatable member attached to an outer periphery of the base platform; and  
the lower end of the side panels having a width greater than the upper end.

Artz '623, as seen in Figures 1 through 7, shows a structure comprising a base platform (16) configured to support a child, and a plurality of inflatable side panels (14) extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child, and further comprising an inflatable member (18) attached to an outer periphery of the base platform, the inflatable member configured to support the side panels of the structure. Artz '623 expressly teaches independent inflation of vertical support columns (12) for preventing collapse of the inflatable structure (col. 4, lines 56t through 60).

With regard to claims 18 and 2, it would have been obvious to one having ordinary skill in the art at the time of invention to further modify the device taught by the combination of Szego '506 and Bashista et al. '408 such that the side panels would be individually inflatable as suggested by Artz '623 for preventing collapse of the structure and subsequent suffocation of a child in the enclosure.

With regard to claim 27, it would have been obvious to one having ordinary skill in the art at the time of invention to further modify the device taught by the combination of Szego '506

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and Bashista et al. '408 such that it would include an inflatable member attached to the periphery as taught by Artz '623. The motivation would have been to further stabilize the base platform.

With regard to claim 8, it would have been an obvious design choice to one having ordinary skill in the art of cribs at the time the invention was made to make the lower ends of each of the side panels of the device shown by the combination of Szego '506, Bashista et al. '408 and Artz '623 wider than their upper ends. The motivation would have been to stabilize the structure against over-tipping.

6. Claims 23, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szego (U.S. Patent No. 3,763,506) in view of Bashista et al. (U.S. Patent No. 5,881,408) as applied to claim 11 above, and further in view of Bleser et al. (U.S. Patent No. 4,815,153).

The combination of Szego '506 and Bashista et al. '408 fails to teach:

the base platform being formed of a woven mesh;

at least one of the inflatable side panels comprises a region of woven mesh; and

the region of woven mesh extending to the base panel.

Bleser et al. '153, as seen in Figures 1 and 2, disclose an inflatable playpen (12) having a base platform (16) and expressly teach the body being made entirely of molded plastic mesh (col. 4, lines 1 through 3).

With regard to claims 23, 28 and 29, it would have been obvious to one having ordinary skill in the art of cribs at the time the invention was made to modify the base platform of the device shown by the combination of Szego '506 and Bashista et al. '408 such that the base would be formed from a woven mesh as taught by Bleser et al. '153. The motivation would have been to use a durable, fluid impervious material with bidirectional stability.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szego (U.S. Patent No. 3,763,506) in view of Bashista et al. (U.S. Patent No. 5,881,408) and Artz (U.S. Patent No. 5,291,623A) as applied to claim 27 above, and further in view of Bleser et al. (U.S. Patent No. 4,815,153).

The combination of Szego '506, Bashista et al. '408 and Artz '623 fails to teach:  
the base platform being formed of a woven mesh.

Bleser et al. '153, as seen in Figures 1 and 2, disclose an inflatable playpen (12) having a base platform (16) and expressly teach the body being made entirely of molded plastic mesh (col. 4, lines 1 through 3).

With regard to claim 7, it would have been obvious to one having ordinary skill in the art of cribs at the time the invention was made to modify the base platform of the device shown by the combination of Szego '506, Bashista et al. '408 and Artz '623 such that the base would be

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formed from a woven mesh as taught by Bleser et al. '153. The motivation would have been to use a durable, fluid impervious material with bidirectional stability.

#### **(10) Response to Argument**

In response to Appellant's argument that a person of ordinary skill in the art of beds at the time of invention would not be motivated to add the crib liner taught by Bashista et al. '408 to the inflatable bed of Szego '506 because the primary object of the crib liner is to prevent a child from extending her limbs out of a conventional crib between rigid siderails, the Examiner contends the combination unites known elements (i.e., an inflatable crib and a crib liner) and yields a predictable result (i.e., the containment of a child's limbs within the crib interior). The reason one having ordinary skill in the art might desire to keep a child's limbs contained within the crib interior, whether to prevent contact with a nearby electrical outlet or reduce the risk of injury, is irrelevant to the art rejection as all of Appellant's claimed structure is taught by the combination of Szego '506 and Bashista et al. '408 and nothing in either of the references precludes its combination with the other.

In response to Appellant's argument regarding claim 30, the Examiner contends the crib liner of the apparatus taught by the combination of Szego '506 and Bashista et al. '408 is capable of "preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate" as recited in the claim. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP 2114.

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In response to Appellant's argument regarding claims 31 and 32, the Examiner contends the prior art combination of Szego '506 and Bashista et al. '408 meets the invention as broadly claimed. Specifically, Appellant failed to define the "corner region" over the prior art structure.

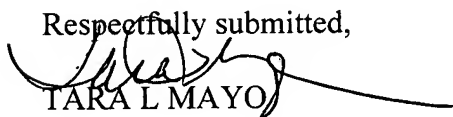
In response to Appellant's statements regarding the rejection of claims 2 through 10, 15 through 18, 23 and 27 through 29, Appellant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

  
TARA L MAYO

PRIMARY EXAMINER

WORKGROUP 3670

Conferees:

Thomas B. Will 

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